

Minimum Wage and Overtime Pay

Fair Labor Standards Act of 1938 (FLSA), as amended (29 USC §201 *et seq.*; 29 CFR Parts 510 to 794)

Who is Covered

The Fair Labor Standards Act (FLSA) establishes standards for minimum wages, overtime pay, record keeping and child labor. These standards affect more than 100 million workers, both full-time and part-time, in the private and public sectors.

The Act applies to enterprises with employees who engage in interstate commerce, produce goods for interstate commerce, or handle, sell or work on goods or materials that have been moved in or produced for interstate commerce. For most firms, a test of not less than \$500,000 in annual dollar volume of business applies (*i.e.*, the Act does not cover enterprises with less than this amount of business).

However, the Act does cover the following regardless of their dollar volume of business: hospitals; institutions primarily engaged in the care of the sick, aged, mentally ill or disabled who reside on the premises; schools for children who are mentally or physically disabled or gifted; preschools, elementary and secondary schools and institutions of higher education; and federal, state and local government agencies.

Employees of firms that do not meet the \$500,000 annual dollar volume test may be covered in any workweek when they are individually engaged in interstate commerce, the production of goods for interstate commerce, or an activity that is closely related and directly essential to the production of such goods.

The Act covers domestic service workers, such as day workers, housekeepers, chauffeurs, cooks, or full-time babysitters, if they receive at least \$1,300 (2001) in cash wages from one employer in a calendar year, or if they work a total of more than eight hours a week for one or more employers.

An enterprise that was covered by the Act on March 31, 1990, and that ceased to be covered because of the increase in the annual dollar volume test to \$500,000, as required under the 1989 amendments to the Act, continues to be subject to the overtime pay, child labor and recordkeeping requirements of the Act.

The Act exempts some employees from its overtime pay and minimum wage provisions, and it also exempts certain employees from the overtime pay provisions alone. Because the exemptions are narrowly defined, employers should check the exact terms and conditions for each by contacting their local Wage and Hour Division office (www.dol.gov/esa/contacts/whd/america2.htm) within the Department of Labor's Employment Standards Administration.

The Employment Law Guide is offered as a public resource. It does not create new legal obligations, and it is not a substitute for the U.S. Code, Federal Register, and Code of Federal Regulations as the official sources of applicable law. Every effort has been made to ensure that the information provided is complete and accurate as of the time of publication, and this will continue. Later versions of this Guide will be offered at www.dol.gov/compliance or by calling our Toll-Free Help Line at 1-866-4-USA-DOL (1-866-487-2365).

The following are examples of employees exempt from both the minimum wage and overtime pay requirements:

- Executive, administrative and professional employees (including teachers and academic administrative personnel in elementary and secondary schools), outside sales employees, and certain skilled computer professionals (as defined in the Department of Labor's regulations);*
- Employees of certain seasonal amusement or recreational establishments;
- Employees of certain small newspapers and switchboard operators of small telephone companies;
- Seamen employed on foreign vessels;
- Employees engaged in fishing operations;
- Employees engaged in newspaper delivery;
- Farm workers employed on small farms (*i.e.*, those that used less than 500 "man-days" of farm labor in any calendar quarter of the preceding calendar year); and
- Casual babysitters and persons employed as companions to the elderly or infirm.

The following are examples of employees exempt from the overtime pay requirements only:

- Certain commissioned employees of retail or service establishments;
- Auto, truck, trailer, farm implement, boat or aircraft salespersons employed by non-manufacturing establishments primarily engaged in selling these items to ultimate purchasers;
- Auto, truck, or farm implement parts-clerks and mechanics employed by non-manufacturing establishments primarily engaged in selling these items to ultimate purchasers;
- Railroad and air carrier employees, taxi drivers, certain employees of motor carriers, seamen on American vessels, and local delivery employees paid on approved trip rate plans;
- Announcers, news editors and chief engineers of certain non-metropolitan broadcasting stations;
- Domestic service workers who reside in their employers' residences;
- Employees of motion picture theaters; and
- Farmworkers.

Certain employees may be partially exempt from the overtime pay requirements. These include:

- Employees engaged in certain operations on agricultural commodities and employees of certain bulk petroleum distributors;
- Employees of hospitals and residential care establishments that have agreements with the employees that they will work 14-day periods in lieu of 7-day workweeks (if the employees are paid overtime premium pay within the requirements of the Act for all hours worked over eight in a day or 80 in the 14-day work period, whichever is the greater number of overtime hours); and

*These regulations were revised effective August 23, 2004.

- Employees who lack a high school diploma, or who have not completed the eighth grade, who spend part of their workweeks in remedial reading or training in other basic skills that are not job-specific. Employers may require such employees to engage in these activities up to 10 hours in a workweek. Employers must pay normal wages for the hours spent in such training but need not pay overtime premium pay for training hours.

Basic Provisions/Requirements

The Act requires employers of covered employees who are not otherwise exempt to pay these employees a minimum wage of not less than \$5.15 an hour as of September 1, 1997. Youths under 20 years of age may be paid a minimum wage of not less than \$4.25 an hour during the first 90 consecutive calendar days of employment with an employer. Employers may not displace any employee to hire someone at the youth minimum wage.

Employers may pay employees on a piece-rate basis, as long as they receive at least the equivalent of the required minimum hourly wage rate. Employers of tipped employees (*i.e.*, those who customarily and regularly receive more than \$30 a month in tips) may consider such tips as part of their wages, but employers must pay a direct wage of at least \$2.13 per hour if they claim a tip credit. They must also meet certain other conditions.

The Act also permits the employment of certain individuals at wage rates below the statutory minimum wage under certificates issued by the Department of Labor:

- Student learners (vocational education students);
- Full-time students in retail or service establishments, agriculture, or institutions of higher education; and
- Individuals whose earning or productive capacities for the work to be performed are impaired by physical or mental disabilities, including those related to age or injury.

The Act does not limit either the number of hours in a day or the number of days in a week that an employer may require an employee to work, as long as the employee is at least 16 years old. Similarly, the Act does not limit the number of hours of overtime that may be scheduled. However, the Act requires employers to pay covered employees not less than one and one-half times their regular rates of pay for all hours worked in excess of 40 in a workweek, unless the employees are otherwise exempt.

Employers must keep records on wages, hours and other information as set forth in the Department of Labor's regulations. Most of this data is the type that employers generally maintain in ordinary business practice.

The Act prohibits performance of certain types of work in an employee's home unless the employer has obtained prior certification from the Department of Labor. Restrictions apply in the manufacture of knitted outerwear, gloves and mittens, buttons and buckles, handkerchiefs, embroideries, and jewelry (where safety and health hazards are not involved). Employers wishing to employ homeworkers in these industries are required to provide written assurances to the Department of Labor that they will comply with the Act's wage and other requirements, among other things.

The Act generally prohibits manufacture of women's apparel (and jewelry under hazardous conditions) in the home except under special certificates that may be issued when the employee cannot adjust to factory work because of age or disability (physical or mental), or must care for a disabled individual in the home.

Special provisions apply to state and local government employment.

It is a violation of the Act to fire or in any other manner discriminate against an employee for filing a complaint or for participating in a legal proceeding under the Act. The Act also prohibits the shipment of goods in interstate commerce that were produced in violation of the minimum wage, overtime pay, child labor, or special minimum wage provisions.

Employee Rights

Employees may find out how to file a complaint from local Wage and Hour Division offices (www.dol.gov/esa/contacts/whd/america2.htm) or from the program's toll-free information line at 1-866-4USWAGE.

In addition, an employee may file a private suit, generally for the previous two years of back pay (three years in the case of a willful violation) and an equal amount as liquidated damages, plus attorney's fees and court costs.

Compliance Assistance Available

More detailed information about the FLSA, including copies of explanatory brochures and regulatory and interpretative materials, is available on the Wage and Hour Division's Web site (www.wagehour.dol.gov) or by contacting the local Wage and Hour Division offices (www.dol.gov/esa/contacts/whd/america2.htm). Another compliance assistance resource, the *eLaws* Fair Labor Standards Act Advisor (www.dol.gov/elaws/esa/flsa/screen7.asp), helps answers questions about workers and businesses that are subject to the FLSA. For additional assistance, contact the Wage and Hour Division help line at 1-866-4USWAGE.

Penalties/Sanctions

The Department of Labor uses a variety of remedies to enforce compliance with the Act's requirements. When Wage and Hour Division investigators encounter violations, they recommend changes in employment practices to bring the employer into compliance, and they request the payment of any back wages due to employees.

Willful violators may be prosecuted criminally and fined up to \$10,000. A second conviction may result in imprisonment. Employers who willfully or repeatedly violate the minimum wage or overtime pay requirements are subject to civil money penalties of up to \$1,000 per violation.

When the Department of Labor assesses a civil money penalty, the employer has the right to file an exception to the determination within 15 days of receipt of the notice. If an exception is filed, it is referred to an Administrative Law Judge for a hearing and determination as to whether the penalty is appropriate. If an exception is not filed, the penalty becomes final.

The Department of Labor may also bring suit for back pay and an equal amount in liquidated damages, and it may obtain injunctions to restrain persons from violating the Act.

Relation to State, Local, and Other Federal Laws

State laws also apply to employment subject to this Act. When both this Act and a state law apply, the law setting the higher standards must be observed.